IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1735 OF 2006

Pratap Singh Jalim Singh Thakur (deceased - through) Smt. Usha Singh w/o Anil Kumar Pratap Singh Thakur ..Petitioners.

Vs.

Krishnakant Kalgutkar & Anr. ..Respondents.

....

Mr. B.H. Mehta for the Petitioners.

CORAM: DR. D.Y. CHANDRACHUD, J.

7th June, 2006.

P.C. :

There is a concurrent finding in this case by both the Courts below that the ground of subletting has not been established. A trust deed was executed on 10th July, 1940 by the grandfather Jalimsingh Manoharsingh Thakore under which the settlor and his wife were appointed as the trustees. The First Plaintiff Pratap Singh and his sons were shown as the beneficiaries. After the death of the survivor of the settlor, the net balance was to be paid to Pratap Singh for his own use and benefit and for the use and benefit of his wife and children. It is undisputed that the sons of Pratap Singh were also the

beneficiaries of the trust. The defence which has been accepted by the Trial Court and the First Appellate Court was that the earlier tenant, the First Defendant, surrendered the tenancy in March 1991 and that a fresh tenancy was created by Pavan Kumar, one of the sons of Pratap Singh in favour of the Second Defendant. It is undisputed that the bank passbook was produced in evidence which showed deposit entries in the account of Pratap Singh. During the cross examination of Pavan Kumar who had created a fresh tenancy, it was in fact suggested to him that he was empowered by his father to collect rent from the tenants and it was suggested to him that he was only authorized to collect the rent. This suggestion was denied by him. The Second Defendant contended that he was inducted into the premises by Pavan Kumar on a monthly rent of Rs.76/- and this case was found to have been corroborated by the documents produced by the original Plaintiffs. On the balance, both the Courts have held that Pavan Kumar who was the son of deceased Plaintiff No.1 was managing the property; that he accepted the surrender of tenancy from the First Respondent and let out the premises to the Second Respondent. The Second Petitioner herein admitted that he had no knowledge of the surrender of tenancy rights. There are undoubtedly disputes

between the brothers and a suit between them is pending. On the state of the record as it stands and particularly in the light of the fact that Pavan Kumar has been held to be entitled to manage the property, a finding has been arrived that there is no subletting. This is a finding which is a finding of fact and in the exercise of the supervisory jurisdiction under Article 227, the Court would not be justified in reappreciating the evidence. No case for interference is made out. The Petition is dismissed.